

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11537 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? -
2. To be referred to the Reporter or not? -
3. Whether Their Lordships wish to see the fair copy of the judgement? -
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? -
5. Whether it is to be circulated to the Civil Judge?

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NATVARLAL DALABHAI PARMAR

Versus

STATE OF GUJARAT

Appearance:

MR RK MISHRA for Petitioner
MR ST MEHTA AGP for Respondents.

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 11/09/98

ORAL JUDGEMENT

By means of this writ petition, the petitioner has sought for quashing Circular dated 6-4-1994 of the respondent no. 1 whereby the District Backward Class Welfare Officer was directed to terminate the services of the petitioner and other employees working as peon, sweeper, Cook, security guard, Hamal/peon etc. of Adarsh Nivasi Schools/Govt. Boys' Hostels under his control and to appoint new employees in place of the petitioners and

other employees.

2. The respondent authorities had asked the names from the Area's Welfare Department and that of Employment Exchange for filling in the post of "Chowkidar". The name of the petitioner was forwarded and he was called for interview by the respondent authorities at Palanpur by the letter dated 5-5-1992. Interview took place on 28-5-1992 at 8-00 a.m. at the respondent - Adarsh Nivasi School, at Palanpur. Selection Committee consisting of the Officer Office of the respondent - Director and the District Backward Class Welfare Officer, Palanpur, selected the petitioner after following the proper procedure of interview as provided under the Rules. The petitioner was selected as "Chowkidar" on a clear vacancy of Class-IV employee as per the directions of the Government of Gujarat. The Government of Gujarat has specified the time-scale grade of Rs. 750-940 i.e. the minimum time-scale grade prevailing in the Government of Gujarat. The petitioner was appointed by the letter dated 21-7-1992 for the appointment on the clear vacant post at respondent - Adarsh Nivasi School, at Palanpur. He joined his duties on 23-3-1992. He is continue in his service since then without any break. The petitioner is not given the time scale grade salary nor he is issued with the regular appointment to which he was entitled because his appointment had been made against a clear vacant post of Class-IV employee as the petitioner was receiving the amount of Rs. 560/- p.m. as his salary which was less than minimum wage prescribed by the Government. Now the minimum wage is also revised from time to time. The petitioner has also stated that he was discharging his duties of 12 hours of most of the day of month. He was not given holidays, national holiday, national festivals nor he was given the holidays' benefit of Sundays and other holidays. Another person named Bachubhai Dungarbhai Solanki was appointed by the order dated 17-10-92 on the post of "Rasoda Kamdar" and he was regularised though Mr. Solanki was junior to the petitioner. The petitioner along with other employees made joint representation to the respondent Director that they should also be made regularised and time scale grade salary should also be given to them. But the respondent Director issued the impugned Circular dated 6-4-1994 whereby he directed all the District Backward Class Welfare Officers with those of the Principals of Adarsh Nivasi School to terminate services of the employees because they demanded for their regularisation in service and not to take any work from old employees after their services have come to an end on completion of academic year and further directions are given to appoint new

persons in place of the petitioner and other employees.

3. Contention of the learned advocate for the petitioner that the petitioner was appointed by the Selection Committee in a regular manner on a clear vacancy. The petitioner's status as daily wager was made subject to the approval of the authorities concerned but the authorities concerned has not issued any direction for approval of the petitioner and other employees' regularisation and they continued in service as daily wagers though their Junior Bachubhai Soalnki was made regular and that is in violation of fundamental rights under Article 14 and 16 of the Constitution of India. When the employees including the petitioner made the representation to the respondent Director for giving time scale grade salary the respondent - Director passed the general order directing all the District Backward Class Welfare Officers and the Principal of Adarsh Nivasi School to terminate the services of the employees who were making demand for regularisation of their service and for time scale grade salary.

4. The appointment of the petitioner was not subject to any condition of availability of any regular employee. The petitioner and other employees were appointed on clear vacant posts by selection committee and no order for terminating the services of the petitioner and other employees can be passed. This Court protected the petitioner's service by the interim order dated 6-10-1994 directing the respondents not to terminate services of the petitioner.

5. Learned counsel for the State could not justify the actions of the respondent - Director which are *prima-facie* illegal and not sustainable in the eye of law at all. The order dated 21st July, 1992 was passed considering the letter of the Director dated 1-4-92 and rojkam of District Recruitment Committee dated 25th, 26th, 27th and 28 of May, 1991 and the Resolution of the Finance Department dated 18-6-92. By that order, the petitioner and other employees were appointed on the post mentioned in the Circular 1-4-1992 as daily wager till approval of the Director. But the respondent - Director has not passed the order approving the appointment of the petitioner and other employees. Therefore, they could not be regularised.

6. I have given anxious thought to the submissions of the learned counsel for the parties. It is a fault on the part of the respondent - Director and in case services of the petitioner and other employees were

satisfactory their services could not have been terminated. It is not stated by the learned counsel for the State that the services of the petitioner were not satisfactory hence their services were likely to be terminated. The services of the petitioner and other employees were subject to the condition that they will be appointed as daily wager till approval of the respondent - Director. The respondent Director instead of approving and regularising the services of the petitioner and other employees, he passed the order directing the Subordinate Authorities to terminate the services of the petitioner and other employees who claim for regularisation of their services and time scale grade salary. The petitioner is still working under the protection of the interim order passed by this Court on 6-10-94. On the face of it, the order of the director is arbitrary, illegal and not sustainable in the eye of law.

7. Accordingly, the petition is allowed. The circular dated 6-4-94 of respondent no. 1 is hereby quashed. The respondents are directed to regularise the services of the petitioner from the date of the Circular dated 6-4-94. The petitioner and other employees shall also be given time scale grade salary admissible under the relevant Rules payable to the regular employee of Class-IV category, with all consequential benefits from 6th of April, 1994.

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